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**Title:** Capital Punishment in Classical Athens

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**Citation style:** Kucharski Jan. (2015). Capital Punishment in Classical Athens. "Scripta Classica" (Vol. 12 (2015), s. 13-28).



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## Capital Punishment in Classical Athens\*

**Abstract:** This paper attempts to describe the working of capital punishment within the frame of the Athenian legal system, taking into account the latter's peculiarities and idiosyncracies. In the first place, it approaches the problem of the so-called procedural orientation of Athenian law, arguing that no definite list of capital offences in classical Athens can be compiled. Secondly, it considers the question of how death penalty was imposed in classical Athens and what were its viable substitutes. Finally, it looks at the different ways of its execution, with particular attention given to hemlock poisoning and bloodless crucifixion (*apotympanismos*).

**Key words:** Greece, Athens, Greek law, capital punishment, hemlock, crucifixion

### Capital Offences?

The Athenian law applied the death penalty with truly draconian severity. It is, however, remarkable that no definite list of capital offences can ever be compiled.<sup>1</sup> This is firstly due to our fragmentary knowledge of the Athenian law itself, its workings and its enforcement. But what we do know, instead of clarification, brings further disorder into an already hazy and incomplete picture.

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\* Research for this paper was made possible by a grant from the Polish National Science Centre (no. 2013/11/B/HS2/02973).

<sup>1</sup> Such attempt has been made by I. Barkan: *Capital Punishment in Ancient Athens*. Chicago 1936, pp. 5–40, but his list comprises offences which only could, but needed not be subject to capital punishment, and that depending on the procedure chosen and the discretion of the prosecutor and the jury; see the discussion below.

The most serious obstacle comes with the so-called procedural orientation of Athenian law. It means that the legal system of classical Athens was, to quote Todd, “primarily concerned not with how to formulate and apply legal doctrines, but rather with how to get a dispute satisfactorily settled.”<sup>2</sup> In other words, the Athenian law does not present us with an abstract and coherent system of explicitly formulated rights, duties and sanctions (the legal substance), but instead tends to focus on the procedures by which a given problem or a dispute may be resolved, and in most cases – taken to court.<sup>3</sup> The most frequently used example to illustrate this phenomenon is the Athenian law on *hybris*:

If anyone treats with *hybris* (*hybrizēi*) any person, either child or woman or man, free or slave, or does anything unlawful against any of these, let anyone who wishes, of those Athenians who are entitled, submit a public prosecution (*graphē*) to the *thesmothetai*. Let the *thesmothetai* bring the case to the people’s court within thirty days of the submission of the public prosecution, if no public business prevents it, or otherwise as soon as possible. Whoever the people’s court finds guilty, let it immediately assess whatever the penalty it thinks right for him to suffer or pay.<sup>4</sup>

What is striking about this law is that it specifies neither the offence itself (what does it mean to treat with *hybris*?)<sup>5</sup> nor the punishment to be meted out to the offender. Instead it is preoccupied with defining the details of the procedure: we are told which magistrate is responsible for the proceedings (*thesmothetai*), when is the hearing-in-chief to be introduced (within thirty days), and even under what conditions it could be postponed. Admittedly, the prosecution for *hybris* (*graphē hybreōs*) is a *timētos agōn*, a procedure with no fixed penalty (see below). The

<sup>2</sup> S.C. Todd: *The Shape of Athenian Law*. Oxford 1993, p. 65; M.H. Hansen: *Eisangelia. The Sovereignty of the People’s Court in Athens in the Fourth Century B.C. and the Impeachment of Generals and Politicians*. Odense 1975, pp. 9–10.

<sup>3</sup> “An orientation towards procedure is equally visible in some areas which are subject to automatic penalties and extra-judicial remedies.” Ch. Carey: “The Shape of Athenian Laws.” *CQ* 1998, Vol. 48, no. 1, p. 96.

<sup>4</sup> Ἐάν τις ὑβρίζῃ εἰς τινα, ἢ παῖδα ἢ γυναῖκα ἢ ἄνδρα, τῶν ἐλευθέρων ἢ τῶν δούλων, ἢ παράνομόν τι ποιήσῃ εἰς τούτων τινά, γραφέσθω πρὸς τοὺς θεσμοθέτας ὁ βουλόμενος Ἀθηναίων οἷς ἔξεστιν, οἱ δὲ θεσμοθέται εἰσαγόντων εἰς τὴν ἡλιαίαν τριάκοντα ἡμερῶν ἀφ’ ἧς ἂν ἡ γραφή ἔαν μὴ τι δημόσιον κωλύῃ, εἰ δὲ μὴ, ὅταν ᾖ πρῶτον οἷόν τε. ὅτου δ’ ἂν καταγνῶι ἡ ἡλιαία, τιμάτω περὶ αὐτοῦ παραχρήμα, ὅτου ἂν δοκῇ ἄξιος εἶναι παθεῖν ἢ ἀποτεῖσθαι (Dem. 21.47; tr. D. MacDowell: *Demosthenes: Against Meidias*. Ed. with introduction, translation and commentary. Oxford 1990; slightly modified).

<sup>5</sup> An answer is given by Aristotle (*Rhetoric* 1374a): *hybris* is violence (*pataxai*) committed for the sake of humiliation (*atimasai*) of the victim or self-gratification (*hēsthēnai*); this however, seems to be a rhetorical explication of the law, most likely the correct one, but not contained in its letter nonetheless; another curious example of such cavalier approach to legal definitions is the exact meaning of the term συνοικεῖν, a key word of the law quoted in [Dem.] 59.19: ἐὰν δὲ ξένος ἀστῆρι συνοικῇ... (cf. Ch. Carey: “The Shape of Athenian Laws”..., p. 99).

impression, however, that the relevant law gives priority to matters of procedure over those of substance, seems inescapable.<sup>6</sup>

The understanding of Athenian law as procedural rather than substantive has not gone unchallenged.<sup>7</sup> Scholars have pointed to the existence of explicitly formulated substantial element in many statutes. Perhaps indeed the focus on procedure, undoubtedly marking its presence in some of them, has been unduly emphasized and incautiously generalized onto the entire legal system. Whatever the case, two of its corollaries still seems to hold good ground against criticism. First the procedural flexibility of Athenian law:<sup>8</sup> a given offence may be liable to different procedures, depending on the choosing of the prosecutor or plaintiff.<sup>9</sup> This phenomenon is most succinctly stated by Demosthenes:

Solon, who made these laws, did not give those who wanted to prosecute just one way of exacting justice from the offenders for each offence but many [...] He thought that it was not proper to deprive one of obtaining justice, as each was capable. But how could this be managed? By giving many ways of legal action against offenders – for example thieves. You are strong and confident: use *apagōgē*; you risk a thousand drachma fine. You are weaker: use *ephēgēsis* to the magistrates; they will then manage the procedure. You are afraid even of that: use a *graphē*. You have no confidence in yourself and are too poor to risk a thousand drachma fine: bring a *dikē* before the arbitrator and you will run no risk. None of these actions is the same. In the case of impiety, similarly, you can use *apagōgē*, *graphē*, a *dikē* to the Eumolpidae, a phasis to the Basileus. It is pretty much like that for all the other offences.<sup>10</sup>

<sup>6</sup> Cf. *Ibidem*, pp. 95–96 for more examples of such procedural orientation.

<sup>7</sup> E.M. Harris: “What Are the Laws of Athens About? Substance and Procedure in Athenian Statutes.” *Dike* 2009/2010, Vol. 12/13, pp. 5–64; cf. *Idem*: *The Rule of Law in Action in Democratic Athens*. Oxford 2013, pp. 138–174. Ch. Carey: “The Shape of Athenian Laws”..., pp. 98–107; cf. also P.J. Rhodes: “ΕΙΣΑΓΓΕΛΙΑ in Athens.” *JHS* 1979, Vol. 99, pp. 106–107.

<sup>8</sup> The classic study of this phenomenon is R. Osborne: “Law in Action in Classical Athens.” *JHS* 1985, Vol. 105, pp. 40–58; cf. *Idem*: *Athens and Athenian Democracy*. Cambridge 2010, pp. 171–200; perhaps it is unduly confused with the concept of “open texture”; cf. E.M. Harris: “Open Texture in Athenian Law.” *Dike* 2000, Vol. 3, pp. 27–79; cf. *Idem*: *The Rule of Law*..., pp. 178–180; Carey 2004: 112–113; but see R. Osborne: *Athens and Athenian Democracy*. Cambridge–New York 2010, pp. 200–202.

<sup>9</sup> For this see R. Osborne: “Law in Action in Classical Athens”..., pp. 40–44; cf. *Idem*: *Athens and Athenian Democracy*..., pp. 171–177, and the corrective remarks of Carey 2004.

<sup>10</sup> δεῖν δ' ὥτιο μηδὲν ἀποστερεῖσθαι τοῦ δίκης τυχεῖν, ὥς ἕκαστος δύναται. πῶς οὖν ἔσται τοῦτο; ἐὰν πολλὰς ὁδοὺς δῶι διὰ τῶν νόμων ἐπὶ τοὺς ἡδικοτάτας οἷον τῆς κλοπῆς. ἔρρωσαι καὶ σαυτῷ πιστεύεις; ἀπαγε· ἐν χιλίαις δ' ὁ κίνδυνος. ἀσθενέστερος εἰ τοῖς ἀρχουσιν ἐφηγοῦ τοῦτο πῆσουσιν ἐκεῖνοι. φοβεῖ καὶ τοῦτο γράφου. καταμέμφει σεαυτὸν καὶ πενής ὦν οὐκ ἂν ἔχοις χιλίας ἐκτεῖσαι· δικάζου κληρὸς πρὸς διαιτητὴν καὶ οὐ κινδυνεύσεις... (Demosthenes 22.25; tr. R. Osborne: *Athens and Athenian Democracy*...).

The second, closely related corollary of the procedural orientation of Athenian law is that penalties in Athenian law tend not to follow the offence itself (legal substance), but depend on procedures used by the litigant to redress it. Thus, to use Demosthenes' example of theft,<sup>11</sup> a criminal brought to trial through a private suit (*dikē klopēs*), if found guilty, had to pay damages in the double of the incriminated sum or the stolen object's value, in addition to which he could be also bound in the stocks for five days. If, however, the aggrieved party chose the more serious procedure of public prosecution (*graphē klopēs*),<sup>12</sup> the thief could face the death penalty which, however, was not fixed by law (the case being a *timētos agōn*).<sup>13</sup> It was a statutory requirement in the most extreme possibility of dealing with theft: that of "arrest" (*apagōgē*) along with its variation (*ephēgēsis*).

Procedures in which the penalties were not fixed by law are referred to as *timētoi agones*, named so because conviction in such cases was followed by a second hearing in which the punishment to be imposed was "assessed" (*timēsis*) by the jury. The assessment of penalty was limited to two options only, that proposed by the prosecutor on the one hand, and by the defendant on the other. This is most explicitly brought out in Socrates' deliberation, as Plato would have it:<sup>14</sup>

This man has assessed (*timatai*) the death penalty (*thanatou*) for me. What should I therefore assess in return?

Thus, in a case like the public prosecution of theft (*graphē klopēs*) the defendant could risk capital punishment only if the prosecutor chose to propose it in his indictment and if, upon conviction, the jury found his proposition, and not the defendant's, more suitable during the assessment.

It seems, therefore, that compiling a necessarily incomplete and uncertain list of capital offences cannot do justice to the complexity of the Athenian legal system in this respect. More promising would be a list of procedures which may have been followed by a death sentence upon conviction. Among these a distinction should be made between those in which capital punishment was statutory (*agōnes*

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<sup>11</sup> Cf. Hansen's example: "It is an accepted modern conception of law and justice that, for example, a magistrate guilty of corruption deserves one and the same punishment regardless of the legal procedure employed against him. Not so in Athens. Corruption might be punished with death if the type of process was an *eisangelia*, with a tenfold fine if the offender was brought to trial by an *euthynai*, and he might escape with confiscation of the bribe if the prosecutor preferred to bring in an *apographe*." M.H. Hansen: *Eisangelia. The Sovereignty of the People's Court in Athens*..., p. 9.

<sup>12</sup> The existence of a *graphē klopēs* for the theft of private property has been doubted by D. Cohen: *Theft in Athenian Law*. München 1983, pp. 44–49; cf. however S.C. Todd: *The Shape of Athenian Law*..., pp. 108, 283–284.

<sup>13</sup> R. Osborne: "Law in Action in Classical Athens"..., p. 43; cf. Idem: *Athens and Athenian Democracy*..., p. 176.

<sup>14</sup> τιμᾶται δ' οὖν μοι ὁ ἀνὴρ θανάτου. εἶεν· ἐγὼ δὲ δὴ τίνοος ὑμῖν ἀντιτιμήσομαι (Pl. *Ap.* 36b).

*atimētoi*), and those in which it remained a possibility subject to the discretion of the prosecutor and the jury (*agones timētoi*).

## Capital Procedures?

In the first group listed should be the prosecution for theft of sacred property (*graphē hierosylas*) where death sentence was “embellished” with a ban on burial in Attica (*ataphia*);<sup>15</sup> prosecution for procuring sexual services of free persons (*graphē proagōgeias*);<sup>16</sup> for transgressing the limitations incurred by prostituting oneself (*graphē hetaireseōs*);<sup>17</sup> and – possibly – for adultery (*graphē moicheias*).<sup>18</sup> Capital punishment was also mandatory in the essentially private prosecution of homicide (*dikē phonou*), with an important proviso that it applied only to conviction in cases tried by the Areopagus (premeditated homicide; *phonos ek pronoias*) and the Delphinion (justified homicide; *phonos dikaios*).<sup>19</sup>

Many other procedures from among the *agōnes timētoi* provided the possibility of sentencing the accused to death upon conviction. Among these in the first place should be listed the notorious prosecution for moving a decree contrary to the law (*graphē paranomōn*) and the closely related case of introducing an inexpedient law (*graphē nomon mē epitēdeion theinai*); the prosecution for theft (*graphē klopēs*); for *hybris* (*graphē hybreōs*); for providing false summons (*graphē pseudokleteias*). No private case (except for the *dikē phonou*, see above) in which capital punishment could follow the assessment of penalty upon conviction is known.

There are, however, notable absences from the above lists, which testify to the incompleteness and perhaps unreliability of the procedural criterion. The most revealing example are the procedures of “arrest” (*apagōgē*) and “denunciation” (*endeixis*). Both were used against three distinct groups of offenders: “common criminals” (*kakourgoi*), “exiles” (*pheugontes*) – in case of their illegal return, and finally “disenfranchised” citizens (*atimoi*) – in case when they exercised rights to

<sup>15</sup> X. Hell. 1.7.22; Mem. 1.2.62; Lyc. 1.65; Isocr. 20.6; D.M. MacDowell: *The Law in Classical Athens*. London 1978, p. 149.

<sup>16</sup> Aesch. 1.14, 184; D.M. MacDowell: *The Law in Classical Athens*..., p. 125; N. Fisher (ed.): *Aeschines: Against Timarchos*. Oxford 2001, p. 138.

<sup>17</sup> Aesch. 1.19–20 (with the inauthentic law quoted at 1.21); A.R.W. Harrison: *The Law of Athens*, Vol. 1–2, Oxford 1968–1971, p. 37.

<sup>18</sup> Death – Ibidem, p. 35; not known whether *timetos* or *atimetos* – D.M. MacDowell: *The Law in Classical Athens*..., p. 125.

<sup>19</sup> The court at Delphinion tried cases of homicide where the accused admits to the killing, but claims it was justified according to the letter of the law; if the jury (the *ephetai*) did not accept his plea, he was punished with death (cf. D.M. MacDowell: *Athenian Homicide Law in the Age of the Orators*. Manchester 1963, pp. 70–81).



which they were no longer entitled. In the trials of “common criminals” and “exiles” the death penalty was prescribed by law; as for the “disenfranchised,” only those caught holding a magistracy faced statutory capital punishment upon conviction in an *apagōgē* or *endeixis*; those, on the other hand, who in spite of their disenfranchisement spoke in the assembly or in the courts, if proved guilty, were subject to an assessment of punishment which, of course, could but need not have resulted in death penalty.<sup>20</sup> Yet another well-known procedure, not included in the lists above, the public prosecution for impiety (*graphē asebeias*), is traditionally held to have been a standard *agōn timētos*. However, the conviction on the charge of cutting a sacred olive tree, tried by the Areopagus, was, according to Aristotle followed by a statutory death penalty.<sup>21</sup> Even more revealing in this respect are the charges of “deceiving the people” (*apatē tou dēmou*) and “treason” (*prodosia*). Both are said to have been invariably punished with death, yet the relevant procedures: public prosecution for treason (*graphē prodosias*), “investigation” (*apophasis*), “bringing forth” (*probolē*) and “impeachment” (*eisangelia*) were all, most likely, *agōnes timētoi*. Yet another crux is found in the prosecution of bribery (*graphē dōrōn*): the standard, statutory penalty was monetary: the tenfold of the incriminated sum; however, in cases of buying the votes of the judges, it was – also mandatory – death.<sup>22</sup>

Summing up, it seems that it was very easy to commit a capital offence in classical Athens. Not only because of the law’s severity, but also, perhaps even chiefly because of its substantial laxity and procedural flexibility. Many offences lacked a precise definition, which therefore allowed for a considerable variety of charges to be subsumed under the heading of, say, *hybris*, “treason,” “impiety” and so forth. Many procedures were by definition open to a variety of penalties (*agōnes timētoi*), capital punishment being the most severe: not infrequently, however, this most severe penalty was demanded in cases of delicts otherwise quite innocuous.<sup>23</sup>

<sup>20</sup> A.R.W. Harrison: *The Law of Athens...*, pp. 229, 231; M.H. Hansen: *Apagoge, Endeixis and Ephegesis against Kakourgoi, Atimoi and Pheugontes. A Study in the Athenian Administration of Justice in the Fourth Century BC*. Odense 1976, p. 21.

<sup>21</sup> *AP* 60.2; cf. P.J. Rhodes: *A Commentary on the Aristotelian Athenaion Politeia*. Oxford 1993<sup>2</sup> (orig. 1981), p. 673; on the removal of sacred olive trees as *asebeia* see S.C. Todd: *The Shape of Athenian Law...*, p. 308; on impiety and its prosecution in Athens see recently J. Filonik: “Athenian Impiety Trials. A Reappraisal.” *Dike* 2013, Vol. 16, pp. 11–96.

<sup>22</sup> J.H. Lipsius: *Das Attische Recht und Rechtsverfahren*. Leipzig 1914, p. 403; Aesch. 1.87; Isocr. 8.50; cf. Din. 1.60; Hyp. *Dem.* 24; D.M. MacDowell: “Athenian Laws about Bribery.” *RIDA* 1983, Vol. 30, pp. 60, 64–69.

<sup>23</sup> A good example of which is the use (and abuse) of the “impeachment” (*eisangelia*) procedure by Lycurgus; cf. Hyp. *Eux.* 3; see also D.D. Phillips: “Why Was Lycophron Prosecuted by Eisangelia?” *GRBS* 2006, Vol. 46, pp. 375–394; M.H. Hansen: *Eisangelia. The Sovereignty of the People’s Court in Athens...*, pp. 103–111.

## Substitute(s) and Embellishments

The severity with which the Athenian law implemented the death penalty was, however, to a considerable extent mitigated by the fact that in most cases its considerably milder substitute was available, and it was both socially and legally acceptable: exile. A person accused of a wrongdoing in a procedure where death penalty was either statutory or demanded by the prosecution, could simply leave Athens before the trial. Obviously, such a person thus forfeited the case which in turn resulted in a death sentence *in absentia*.<sup>24</sup> The defendant in a homicide trial (*dikē phonou*) had an even wider margin of liberty: he could choose voluntary exile up to any moment until his second defense speech (unlike most other cases, homicide trials required both sides to deliver two alternating speeches); even then, if we are to trust Antiphon's rhetorical exercises, he could have his friends or relatives deliver the last speech on his behalf.<sup>25</sup>

Though obviously a preferable alternative to death, exile was a very severe penalty in its own right. Usually followed by a confiscation of property, it deprived one of all means to live, and more importantly rendered him a social outcast, without a share in and protection of any community. And unless revoked through a special decree, it was lifelong (*aeiphygia*). Only the rich and influential, who owned property outside Athens (and therefore exempt from confiscation) and had friends or relatives abroad, could entertain the thought of living a normal life after exile. This perhaps explains why the defendants (or would-be defendants) in high-profile political trials chose this option rather than took their chances before the court.

Not everyone, however, was at liberty to choose exile, regardless of his economic status. Quite certainly it was not an option for those who awaited trial in prison (unless, of course, they managed to break out of confinement, which was neither impossible nor even exceptionally challenging).<sup>26</sup> This applied in the first place to those brought to court by means of *apagōgē* and *ephēgēsis* or *endeixis* followed by an arrest.<sup>27</sup> Perhaps also this applied to those accused of

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<sup>24</sup> Cf. for example S.C. Todd: *The Shape of Athenian Law*..., p. 140; a good instance of this are the cases of impeachment (*eisangelia*) enumerated by Hyperides (*Eux.* 1–2) – all forfeited by the accused.

<sup>25</sup> Cf. Ant. 4.4.1; 5.13; Dem. 23.69; D.M. MacDowell: *Athenian Homicide Law in the Age of the Orators*..., pp. 114–116.

<sup>26</sup> Cf. V.J. Hunter: "The Prison of Athens. A Comparative Perspective." *Phoenix* 1997, Vol. 51, no. 3–4, pp. 305–306, 310–311.

<sup>27</sup> *Apagōgē*, *endeixis* and *ephēgēsis* are closely related public procedures used against "common criminals" (*kakourgoi*) such as burglars, thieves and adulterers, as well as disenfranchised or exiled citizens found in violation of their disenfranchisement and exile respectively; the first two presuppose an arrest, which is necessary in *apagōgē* (literally "arrest"), used against criminals caught *in flagrante delicto*; in *ephēgēsis* the arrest is carried out by a magistrate; cf. M.H. Hansen: *Apagoge, Endeixis and Ephegesis*..., esp. pp. 21–28.



parricide, though the sources here are much less reliable,<sup>28</sup> and there is also positive evidence that no particular regulations against this sort of crime were ever introduced in Athens.<sup>29</sup>

On the other hand, capital punishment could also be subject to various embellishments. Two most frequently used were the confiscation of property (*dēmeusis*) and ban on burial in the Attic soil (*ataphia*). The former sometimes served as a penalty on its own, and frequently accompanied other forms of punishment such as “disenfranchisement” (*atimia*) or exile by sentence (*phygē*); it is uncertain whether there were any cases of death penalty without the additional confiscation.<sup>30</sup> The latter was usually associated with treason and sacrilege,<sup>31</sup> though it is uncertain whether it had any procedural specificity.<sup>32</sup> Quite obviously both confiscation and *ataphia* could and frequently were used against those who chose perpetual exile as a substitute for death penalty. Yet another possible embellishment to capital punishment was torture, usually in the form of binding (*streblein*) the convict to the wheel. It could accompany the execution of slaves and metics,<sup>33</sup> however, the evidence that it was applied to Athenian citizens is scant<sup>34</sup> and the only known instances are obviously linked with charges of grave crimes against the state.<sup>35</sup>

<sup>28</sup> μετὰ δὲ τὸν πρότερον λόγον ἐξῆν φυγεῖν, πλὴν εἴ τις γονέας εἴη ἀπεκτονῶς (Pol. 8.117); cf. E. Or. 444, 760.

<sup>29</sup> DL 1.59; Cic. *Rosc. Am.* 70 (= fr. 4a, 4b Ruschenbusch).

<sup>30</sup> Cf. A.R.W. Harrison: *The Law of Athens*..., p. 2.178; cf. J.H. Lipsius: *Das Attische Recht und Rechtsverfahren*..., pp. 931–932.

<sup>31</sup> X. *Hell.* 1.7.22; Dem. 24.7; Lyc. 1.24, 45, 78, 91; Aesch. 3.252; cf. also D. Allen: *The World of Prometheus. The Politics of Punishing in Democratic Athens*. Princeton 2000, pp. 217, 392–393, n. 77.

<sup>32</sup> According to J.H. Lipsius (*Das Attische Recht und Rechtsverfahren*..., p. 191) this applied chiefly to traitors prosecuted by *eisangelia*, which he thinks was an *agon atimētos* in the latter part of the 4th century; cf. however M.H. Hansen: *Apagoge, Endeixis and Ephegesis*..., pp. 17, 34; sacrilege (*hierosylia*) could also be prosecuted through a number of procedures (*graphē asebeias*; *eisangelia*), not only the crime-specific *graphē hierosylia*s; cf. also A. Helms: “La privation de sépulture dans l’antiquité grecque.” In: *Symposion 2005. Vorträge zur griechischen und hellenistischen Rechtsgeschichte*. Eds. E. Cantarella, J. Méléze Modrzejewski, G. Thür. Wien 2007.

<sup>33</sup> V.J. Hunter: *Policing Athens. Social Control in the Attic Lawsuits, 420–320 BC*. Princeton 1994, pp. 154–162; cf. D.M. MacDowell: *The Law in Classical Athens*..., p. 246.

<sup>34</sup> The only instances of torture used as an actual embellishment of death penalty (and not for e.g. extraction of information) are: Antiphon (not the orator/sophist): στρεβλώσαντες αὐτὸν ἀπεκτείνετε (Dem. 18.133; cf. Din. 1.63) and Phocion: ὅπως καὶ στρεβλωθεὶς Φωκίων ἀποθάνοι (Plu. *Phoc.* 35); cf. V.J. Hunter: *Policing Athens. Social Control in the Attic Lawsuits*..., pp. 174–175.

<sup>35</sup> Antiphon acting as an agent of Philip was said to have tried to set fire to the Athenian docks (Dem. 18.132); Phocion was denounced as a traitor (*Phoc.* 33.3).

## Execution I: The Good Way to Go

As for the execution itself – once it finally came to it – its most widely known form, owing its notoriety to Socrates, is that by hemlock. Referred to either as “drug/poison” (*pharmakon*) or simply “hemlock” (*kōneion*) it is, actually, a mixture based on plant extract from poison hemlock (*conium maculatum*) – which should not be confused with water hemlock (*cicuta verosa*), though the latter is also highly toxic. We do not know the details of its preparation; it was most likely pounded in a mortar (*thyeia*), the word used for it by the ancient authors being “to rub” (*tribein*).<sup>36</sup> The person responsible for it was a public slave referred to as *dēmios*, *dēmokoinos* or *dēmosios*,<sup>37</sup> and it was both prepared and administered in the Athenian prison (*dēsmoterion*), quite like as described in Plato’s *Phaedo*.

The execution followed the death sentence immediately. The convicts were lead from the court to the prison, not infrequently perhaps, as in the case of Phokion, accompanied by insults and abuse from the crowd. Once in the prison, however, they may have enjoyed a measure of privacy, spending their last moments in the company of their friends and relatives. Only in exceptional cases as that of Socrates was the actual execution deferred, the particular reason here being of religious nature: it had to wait for the return of the sacred ship, dispatched to Delos the day before the trial itself took place.<sup>38</sup>

We do not know exactly when this particular method of execution was introduced in Athens. A *terminus ante quem* may be set in the rule of the Thirty (404–403), who forced many of their victims to drink hemlock, including one of their own, Theramenes, whose last moments have been vividly painted by Xenophon, and Polemarchus, the brother of the famous logographer Lysias, who also happened to be Socrates’ interlocutor and host in *The Republic*. Both died in prison,<sup>39</sup> the former without even hearing any charges, the latter after a parody of trial by the Council.<sup>40</sup> In a morbid anecdote preserved by Xenophon, Theramenes is said

<sup>36</sup> φάρμακον ἐν κύλικι φέροντα τετριμμένον... τοσοῦτον τρίβομεν ὅσον οἰόμεθα μέτριον εἶναι πιεῖν (Pl. *Phaed.* 117a, b); τὸ κώνειον ὁρῶν τριβόμενον... οὐκ ἔφη τρίψειν ἕτερον (Plu. *Phoc.* 36.2, 4); cf. Ar. *Ran.* 123 below.

<sup>37</sup> Cf. J.H. Lipsius: *Das Attische Recht und Rechtsverfahren...*, p. 77, n. 101.

<sup>38</sup> *Phaed.* 58a–e; *Crit.* 43c–d.

<sup>39</sup> Lys. 12.16: λαβὼν εἰς τὸ δεμοτήριον ἀπαγάγοι; 12.18: ἀπεφέρετο ἐκ τοῦ δεσμοτηρίου τεθνεώς; X. *Hell.* 2.3.55–56: ἀπήγαγον τὸν ἄνδρα διὰ τῆς ἀγορᾶς – from the Bouleuterion most likely to the prison.

<sup>40</sup> X. *Hell.* 2.3.24–51; strictly speaking the issue on trial was to strike Theramenes out of the list of citizens; once deprived of his civic rights, the (remaining) Thirty had the power to put him to death without a trial (2.3.51).

to have spilled the remains of the poison “as if playing kottabos” and exclaimed “for the beautiful Critias.”<sup>41</sup>

Did the Thirty actually introduce this particular method of execution?<sup>42</sup> This does not seem likely. In the first place, there are sources indicating that the hemlock was known to the Athenians before the short-lived oligarchy. A joke in Aristophanes’ *Frogs* (405 BC):<sup>43</sup>

**Dionysus:** [J]ust give me the directions, my quickest route down to Hades, and don’t give me one that’s too hot or too cold. **Heracles:** Let me see, which one shall I give you first. Hmm. Well, there’s one via rope and bench: you hang yourself. **Dion.:** Stop it, that way’s too stifling. **Her.:** Well, there’s a shortcut that’s well-beaten – in a mortar (*tetrimménē*). **Dion.:** You mean hemlock? **Her.:** Exactly. **Dion.:** That’s a chill and wintry way! It quickly freezes your shins solid.

though not referring explicitly to execution, clearly suggests that the Athenian public was not only well-acquainted with the lethal effects of the poison, but also with the method of its obtaining (*tribein*). Furthermore it seems highly unlikely that the restored Athenian democracy (403 BC) would so easily have taken over the manner of executing convicts introduced by the shunned regime of the Thirty, which throughout the next century consistently served as a negative foil in the public discourse of classical Athens.

Death by hemlock seems to have been quite mild and humane, especially by the standards of the ancient world, where a great deal of thought and effort was put to make executions as painful and horrifying as possible. Perhaps, however, Plato’s description of Socrates’ death was selective in omitting the more unsavoury aspects of hemlock poisoning:<sup>44</sup> vomiting, salivation, tremor, seizures,<sup>45</sup> convulsions,<sup>46</sup> and

<sup>41</sup> τὸ λειπόμενον ἔφασαν ἀποτοτταβίσαντα εἰπεῖν αὐτὸν· Κριτίαι τοῦτ’ ἔστω τῷ καλῶι (X. *Hell.* 2.3.56); Critias as one of the most prominent among the Thirty, Theramenes being another one; the latter’s execution was the result of a power-struggle the oligarchy.

<sup>42</sup> Thus J.H. Lipsius: *Das Attische Recht und Rechtsverfahren...*, p. 77, n. 101; cf S.C. Todd: “How to Execute People in Fourth-Century Athens.” In: *Law and Social Status in Classical Athens*. Eds. V. Hunter, J. Edmondson. Oxford 2000, pp. 39–40.

<sup>43</sup> Διόνυσος· μηδὲν ἔτι πρὸς ταῦτ’, ἀλλὰ φράζε τῶν ὁδῶν ὅπῃ τάχιστ ἀφίξομαι ‘ς Αἴδου κάτω· καὶ μήτε θερμὴν μήτ’ ἄγαν ψυχρὰν φράσῃς [...] Ἡράκλῃς· ἀλλ’ ἔστιν ἀτραπὸς ξύντομος τετριμμένη ἢ διὰ θείας. Διόνυσος· ἄρα κώνειον λέγεις; Ἡράκλῃς· μάλιστα γε. Διόνυσος· ψυχρὰν γε καὶ δυσχαίμερον· εὐθὺς γὰρ ἀποπήγνυσι τὰντικνήμια. (Aristophanes, *Frogs* 117–126; tr. J. Henderson).

<sup>44</sup> Ch. Gill: “The Death of Socrates.” *CQ* 1973, Vol. 23, no. 1, p. 27; S.C. Todd: “How to Execute People in Fourth-Century Athens”..., p. 33.

<sup>45</sup> Perhaps hinted in: ψύχοιτό τε καὶ πήγνυτο (*Phaed* 118a).

<sup>46</sup> Perhaps hinted in: ὀλίγον χρόνον διαλιπὼν ἐκινήθη (*Phaed.* 118a); according to some authorities, however, convulsions are usually associated with water hemlock poisoning (D. Rizzi et al.: “Clinical Spectrum of Accidental Hemlock Poisoning: Neurotoxic Manifestations, Rhabdomyolysis,

choking.<sup>47</sup> Death in hemlock poisoning is usually due to respiratory failure: the toxic alkaloids from the plant (among them coniine) block the neuromuscular junction, which results in the paralysis of skeletal muscles, including the diaphragm and the intercostals.<sup>48</sup> Since coniine also affects the central nervous system, poisoning as a rule leads to a coma: the poisoned person is therefore unconscious when the respiratory failure develops.

We have therefore every reason to suppose that execution by hemlock provided the convict with a relatively good death, considered by the ancient Greeks a considerable “luxury.”<sup>49</sup> Every luxury, however, has its price, and this was also the case of death by hemlock. Preparing a single lethal dose of the extract at the end of the 4th century cost twelve drachmas. Though not a prohibitive price, it was certainly far from symbolic: at that time the daily wage of a skilled labourer was two to three drachmas. We do not know exactly to what extent was the state ready to take on the financial burden of such costs. Plato’s Socrates nonchalantly orders the *dēmios* to prepare him the double or even triple dosage, if necessary.<sup>50</sup> On the other hand, the experiences of Phocion in his last moments clearly illustrate the grim absurdity of the monetary side of hemlock execution. According to Plutarch, those of his friends sentenced to death along with him begged for the “privilege” of dying first. Phocion, the agreeable person he was, granted their wish, but in the end he himself was left with no more hemlock to drink. Upon this the *dēmosios* refused to prepare (*tribein*) another dose unless paid its worth: the twelve drachmas. The unfortunate Phocion was forced to summon one of his friends and ask him to provide the demanded sum.<sup>51</sup> We do not know, however, whether the first dose was also bought by Phocion himself, or perhaps provided by the state.

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and Acute Tubular Necrosis.” *Nephrology Dialysis Transplantation* 1991, Vol. 12, no. 6; D.G. Barceloux: *Medical Toxicology of Natural Substances*. New Jersey (Wiley) 2008, p. 798).

<sup>47</sup> Cf. D. Rizzi et al.: “Clinical Spectrum of Accidental Hemlock Poisoning...”; J. Vetter: “Poison Hemlock (*Conium Maculatum*).” *Food and Chemical Toxicology* 2004, Vol. 42, pp. 1379–1380; D.G. Barceloux: *Medical Toxicology of Natural Substances...*, p. 798; see also Ch. Gill: *The Death of Socrates...*, pp. 25–26; many of these were already known to the ancients, cf. Nic. *Alex.* 186–194; Dsc. *De materia medica* 4.78 (Wellman); *Alex.* 11.

<sup>48</sup> The effects wear off after approximately 48 hours, provided that the patient is given artificial respiration; a full recovery is thus possible, unless renal failure develops as a complication after the possible disintegration of skeletal-muscle cells (rhabdomyolysis); cf. D. Rizzi et al.: “Clinical Spectrum of Accidental Hemlock Poisoning...”

<sup>49</sup> As the one given by the gods to Cleobis and Biton, who died in their sleep (Hdt 1.31; Plu. *Sol.* 27.7: τεθνηκότες ἀναλγῇ καὶ ἄλυπον... θάνατον).

<sup>50</sup> μόνον τὸ ἑαυτοῦ παρασκευάζετω ὥς καὶ δις δώσων, ἐὰν δὲ δέηι, καὶ τρίς (Pl. *Phaed.* 63e); later on however (117b) the attendant explicitly says that they prepare no more than the necessary dosage.

<sup>51</sup> Plu. *Phoc.* 36.3–4.

## Execution II: The Bad Way to Go

If execution by hemlock was indeed a luxury, what was the less attractive standard in classical Athens? What would have happened to someone who refused to drink the deadly potion? What might have awaited Phocion if he failed to procure the demanded twelve drachmas? Surely Athens would have provided him with an execution free of charge, however, there is reason to believe that it would have been much less pleasant. The only known alternative to hemlock poisoning was in that period execution by *apotympanismos*.

Initially it was assumed that this sinister term referred to death by cudgelling, quite like the Roman *fustuarium* meted out to soldiers caught neglecting on duty and deserters, described in greater detail by Polybius.<sup>52</sup> On this assumption, a morbid picture of a typically Athenian execution emerges with the convicts beaten to death with wooden clubs. Indeed, on the authority of late-antique and Byzantine lexicographers, the term *tympanon* itself was thought to denote a cudgel.<sup>53</sup> We have every reason to believe, however, that they were wrong. *Tympanon* is not so much the cudgel, that is the object which hits, but at the best that which is being hit (possibly with a cudgel), like a drum.<sup>54</sup> An alternative theory therefore sought the meaning of *apotympanismos* in a hypothetical device, to which the convict was fastened (the *tympanon*) – and subsequently beaten to death with clubs.<sup>55</sup> Now this is very close to the modern consensus, save the persistent resort to cudgelling. The fact that the latter seems to creep in through the back door in this modified definition is due not only to the possible etymological link between *tympanon* and *typtein* (to hit),<sup>56</sup> but chiefly based on the authority of Plutarch, or, to be more specific, the testimony of Duris of Samos which he quotes, not without criticism. According to Duris, after quashing the anti-Athenian rebellion of his native island (440), Pericles had the ringleaders fastened to planks (*sanides*) on

<sup>52</sup> καθίσαντος δὲ παραχρήμα συνεδρίου τῶν χιλιάρχων κρίνεται, κἂν καταδικασθῇ, ξυλοκοπεῖται. τὸ δὲ τῆς ξυλοκοπίας ἐστὶ τοιοῦτον. λαβὼν ξύλον ὁ χιλιάρχος τούτῳ τοῦ κατακριθέντος οἶον ἤψατο μόνον, οὗ γενομένου πάντες οἱ τοῦ στρατοπέδου τύπτοντες τοῖς ξύλοις καὶ τοῖς λίθοις τοὺς μὲν πλείστους ἐν αὐτῇ τῇ στρατοπεδείᾳ καταβάλλουσι... (Pol. 6.37.1–3); on the approximation of *apotympanismos* and *fustuarium* cf. for instance J.H. Lipsius: *Das Attische Recht und Rechtsverfahren*..., p. 77 n. 101 (Tötung mit der Keule); E.M. Cope, J.E. Sandys: *The Rhetoric of Aristotle. With a Commentary*, Vols. 1–3, Cambridge 1877, p. 66.

<sup>53</sup> τύμπανον· τὸ τοῦ δημίου ξύλον, ᾧ τοὺς παραδιδόμενους διεχειρίζετο· καὶ το ἀποτυμπανίζειν ἐντεῦθεν (Phot. Lex, s.v.).

<sup>54</sup> LSV s.v. I.1: “kettle-drum”; II.3: “cudgel”; Suppl. “delete the section [3] transferring quotation to I.”

<sup>55</sup> ἀποτυμπανισμός [...] Die Bezeichnung kommt von dem τύμπανον, einer Maschine, auf welche die Verbrecher gebunden wurden [...]. Die Hinrichtung aber vollzog sich nicht mit dem Schwert [...] sondern durch Schlag mit der Keule. (RE s.v. ἀποτυμπανισμός).

<sup>56</sup> Questioned in the DELG (s.v. τύμπανον).

the main square, and after ten days of exposure cudgelled to death with wooden clubs (*xylōis*).<sup>57</sup>

Contrary to Plutarch's criticism (*epitragōidei*), Duris's account may actually contain a grain of truth. At least insofar as the manner of executing the unfortunate Samians is concerned which, according to modern consensus, reflects to a considerable extent the actual Athenian practice, however, with the emphasis on the fastening itself rather than the cudgelling which, most likely was an optional embellishment, perhaps even a *coup de grâce*. Now the modern consensus dates back to the excavations conducted in Phaleron in the years 1911 and 1915, during which unearthed were seventeen skeletons, fastened with five metal collars (around the wrists, ankles, and the neck) to something which most likely was a wooden plank. Though the findings are dated back to the 7th century BC, there is a good reason to believe that we are dealing here with the same method of execution as the one described by Duris. The historian (and tyrant) of Samos, however, is not the only source which gives us the details of the peculiar execution by fastening. Much more information on this subject, though necessarily distorted by the comic convention, comes from Pericles' near contemporary Aristophanes:<sup>58</sup>

Archer, take him inside and bind him on the plank (*sanidi*), then set him up right here and keep an eye on him. Don't let anybody get near him. If anybody tries to, take your whip and hit him.

The convict here is Mnesilochus, Euripides' inlaw, the unfortunate anti-hero of the *Thesmophoriazusae*, caught in the act as he transgresses (by transdressing) the strictly female character of the eponymous festival. Later on he is heard to complain that he has bonds "everywhere" (*pantōs*),<sup>59</sup> including the neck,<sup>60</sup> and that he is exposed for the birds to feed on.<sup>61</sup> Aristophanes' is not the only 5th-century account of such method of execution. In the concluding chapters of his *History* Herodotus tells us of the punishment meted out to Artayctes, the sacrilegious satrap of Sestus: the victorious Greeks, having captured the city, led him to the seashore, where they "fastened him (*prospassaleusantes*) to a plank

<sup>57</sup> Δούρις δ' ὁ Σάμιος τούτοις ἐπιτραγωιδεῖ πολλὴν ὀμότητα τῶν Ἀθηναίων καὶ τοῦ Περικλέους κατηγορῶν [...] ὡς ἄρα τοὺς τριηράρχους καὶ τοὺς ἐπιβάτας τῶν Σαμίων εἰς τὴν Μιλησίων ἀγορὰν καταγαγὼν καὶ σανίσι προσδήσας ἐφ' ἡμέρας δέκα κακῶς ἤδη διακειμένους προσέταξεν ἀνελεῖν, ξύλοις τὰς κεφαλὰς συγκόψαντας. Plutarch, *Pericles* 28. 1–3 (=BNJ 76F67).

<sup>58</sup> δῆσον αὐτὸν εἰσάγων, | ὦ τοξότ', ἐν τῇ σανίδι, κᾶπειτ' ἐνθαδὶ | στήσας φύλαττε καὶ προσιέναι μηδένα | ἔα πρὸς αὐτόν, ἀλλὰ τὴν μάστιγ' ἔχων | παῖ', ἦν προσίημι τις. (Ar. *Thesm.* 930–934; tr. J. Henderson).

<sup>59</sup> πάντως δέ μοι τὰ δέσμ' ὑπάρχει. (Ar. *Thesm.* 1013).

<sup>60</sup> χάλασον τὸν ἥλον (*Thesm.* 1003 with Austin-Olson 2003: 310); λαιμότμητ' ἄχη δαιμόνι[α] (1054).

<sup>61</sup> ἵνα μὴ... γέλωτα παρέχω τοῖς κόραξιν ἐστιῶν (*Thesm.* 941); ἐκρέμασέ με κόραξι δεῖπνον (1028n).



(*sanidas*).<sup>62</sup> A much more famous instance of this practice (though yet again, generically adapted) is found in the *Prometheus*, where the eponymous Titan is, yet again, fastened (*prospassaleusō*) by Hephaestus to the mountain (*pagos*).<sup>63</sup>

All these classical sources, backed by archeological discoveries from the archaic period, seem to tell us one story: a story of bloodless crucifixion, where the convict is fastened to a wooden board and left to die of exposure, a feast for crows. The term “crucifixion” may however be misleading, as the victim most likely had his hands alongside his body. This is, most likely, what the term *apotympanismos* refers to:<sup>64</sup> “planking” as one might attempt to render the Greek literally, the eponymous *tympanon* being nothing else but the plank itself (referred to also as *sanis*) to which the victim was fastened.

As such, *apotympanismos* was certainly far from any idea of “good death.” The convict, dying from exposure, may very well have been left hanging, perhaps on the neck-collar.<sup>65</sup> If he was lucky it may have been fastened tightly enough for him to die of asphyxiation. There may have also been optional embellishments in store for him. The Samians were eventually cudgelled to death, after ten days of exposure. Some others may have been “planked” in a sitting position: *sedet aeternumque sedebit*.<sup>66</sup> The tragic variation included yet another addition: the adamantite wedge driven through Prometheus’ chest.<sup>67</sup> And all this leaving aside the terrible moral suffering of public humiliation and the prolonged exposure to insults and slurs from the mob<sup>68</sup> – a tribulation experienced by Phocion only for a brief while on his *via dolorosa* to the Athenian prison.

<sup>62</sup> ἀπαγαγόντες δὲ αὐτὸν ἐξ τὴν ἀκτὴν [...] πρὸς σανίδας προσπασσαλεύσαντες ἀνεκρέμασαν (Hdt 9.120).

<sup>63</sup> ἄκοντα σ’ ἄκων δυσλύτοις χαλκεύμασιν | προσπασσαλεύσω τῷδ’ ἀπανθρώποι πάγῳ (A. [Prom.] 19–20).

<sup>64</sup> Cf. Lys. 13.68; Dem. 8.61; 9.61; [10.63]; in the latter three wrongly translated by Trevett (J. Trevett: *Demosthenes. Speeches 1–17*. Austin 2011) as “cudgelling to death”; cf. A.D. Keramopoulos [Κεραμόπουλος Α. Δ.]: *Ὁ ἀποτυμπανισμός*. Αθήνα 1923; D.M. MacDowell: *The Law in Classical Athens...*, pp. 254–255; L. Gernet: *Droit et institutions en Grèce antique*. Paris 1982, pp. 175–211 (orig. in REG 37 (1924), 261–293); E. Cantarella: *I supplizi capitali in Grecia e a Roma*. Milano 1991, pp. 41–46; 34–35, 40–42; J. Mélèze Modrzejewski: *Droit et justice dans le monde grec et hellénistique*. Warsaw 2011, pp. 317–338.

<sup>65</sup> Hdt 9.120: προσπασσαλεύσαντες ἀνεκρέμασαν; Ar. *Thesm.* 1028: ἐκρέμασέ με κόραξι δειπνον; 1054: ὡς ἐκρεμάσθην, λαιμότμητ’ ἄχῃ δαιμόνι[α].

<sup>66</sup> καὶ Λυσίμαχον αὐτῆς ἀγαγούσης ὡς τὸν δῆμιον, καθήμενον ἤδη μέλλοντα ἀποθνήσκειν Εὐμηλίδης ὁ Ἀλωπεκῆθεν ἀφείλετο, οὐ φάσκων δεῖν ἄνευ δικαστηρίου γνώσεως οὐδένα τῶν πολιτῶν ἀποθνήσκειν· καὶ κρίσεως ἐν δικαστηρίῳ γενομένης, ὁ μὲν Λυσίμαχος ἀπέφυγεν καὶ ἐπωνυμίαν ἔσχεν ὁ ἀπὸ τοῦ τυμπάνου (AP 45.1).

<sup>67</sup> ἀδαμαντίνου νυν σφηνὸς αὐθάδῃ γνάθον | στέρνων διαμπὰξ πασσάλεν’ ἐρρωμένως (64–65).

<sup>68</sup> It is uncertain whether indeed the *apotympanismos* took place out in the open or, perhaps, in prison; Ar. *Thesm.* 930 (εἰσάγων) may suggest the latter; quite certainly, however, some of the convict’s enemies, perhaps the prosecutor himself, were allowed to witness his affliction, as explicitly stated by Aeschines: οὐ γὰρ ὁ θάνατος δεινόν, ἀλλ’ ἡ περὶ τὴν τελευτὴν ὕβρις φοβερά. πῶς δὲ οὐκ οἰκτρὸν βλέπειν ἐχθροῦ πρόσωπον ἐπεγγελῶντος, καὶ ταῖς ὥσι τῶν ὄνειδῶν ἀκοῦσαι.

We do not know on what principle were the Athenian convicts qualified to one or another type of execution. The amount of twelve drachmas can hardly be the decisive argument: we do not know whether the first dose was provided gratis, and even if not, a three-days wage seems hardly a prohibitive price. An attractive hypothesis put forward by Gernet links the *apotympanismos* to the procedure of *apagōgē*, *ephēgēsis* and *endeixis*.<sup>69</sup> According to him the nastier way of execution was reserved for common criminals (*kakourgoi*) caught *in flagrante delicto*.<sup>70</sup> The much less unpleasant hemlock on the other hand was reserved for a “better class” of criminals, mostly those convicted in high-profile political trials. This elegant theory is, however, upset by the fact that our sources tell us in admittedly hypothetical of *apotympanismos* meted out to traitors.<sup>71</sup> A traitor was no common criminal, but instead a prominent “politician,” in service of his country’s enemies, in this case: Philip II. More problematic might seem the fact that Theramenes and Polemarchus, both most likely apprehended through *apagōgē*,<sup>72</sup> were put to death by means of hemlock. Admittedly the regime of the Thirty may not be an adequate illustration of standard democratic practice. The question however, seems to remain open, as the association of *apotympanismos* with *apagōgē*, as Todd puts it, “results less from conviction than from exhaustion”.<sup>73</sup>

## Epilogue: Some Other Ways

Our sources tell us of two other methods of executing people in ancient Athens, the legal status of which still remains debatable: precipitation and stoning. The latter, despite some highly suggestive tragic passages,<sup>74</sup> was never considered

(2.181–182; cf. Dem. 23.69); see also S.C. Todd: “How to Execute People in Fourth-Century Athens”..., pp. 47–49.

<sup>69</sup> L. Gernet: *Droit et institutions en Grèce antique*..., pp. 192–200; S. C. Todd: “How to Execute People in Fourth-Century Athens”..., pp. 43–44.

<sup>70</sup> Incidentally, Mnesilochus suffering *apotympanismos* in the *Thesmophoriazusae* (following a procedure highly resembling the *ephēgēsis*; S.C. Todd: “How to Execute People in Fourth-Century Athens”..., p. 43) is many times (*Thesm.* 762, 893, 899, 929, 944) referred to as *πανούργος*, which frequently was the poetic equivalent of the legal term *κακούργος* (cf. Olson-Austin 2003: 280–281).

<sup>71</sup> Dem. 8.61; 9.61; [9.63]; 19.137; S.C. Todd: “How to Execute People in Fourth-Century Athens”..., p. 42.

<sup>72</sup> Ἐρατοσθένης αὐτὸν ἐν τῇ ὁδῷ λαβὼν εἰς τὸ δεσμωτήριον ἀπαγάγοι (Lys. 12.17); οἱ ἀπήγαγον τὸν ἄνδρα (X. *Hell.* 2.3.56); S.C. Todd: “How to Execute People in Fourth-Century Athens”..., p. 44 (“both clearly arrested by *apagoge*”).

<sup>73</sup> *Ibidem*.

<sup>74</sup> ψῆφος κατ’ αὐτῶν ὀλεθρία βουλευέσεται | λευστήρα δῆμου δ’ οὐ τι μὴ φύγηι μόρον (A. *Theb.* 198–199); κυρία δ’ ἡδ’ ἡμέρα | ἐν ᾗ διοίσει ψῆφον Ἀργείων πόλις, | εἰ χρὴ θανεῖν νῶ λευσίμοι πετρώματι (E. *Or.* 48–50).

a legally sanctioned way of killing convicts. The only known historical examples are the killing of Lycides, followed shortly by his family (479 BC), who as a councillor during Xerxes' invasion suggested surrender;<sup>75</sup> and the execution of Alcibiades (the cousin and namesake of the famous Alcibiades, son of Cleinias, the *enfant terrible* of Athenian politics), caught onboard an enemy ship.<sup>76</sup> The latter seems more like summary justice during warfare, whereas the former has all the characteristics of mob-justice, even if it was eventually sanctioned by the state.

Precipitation, on the other hand, that is throwing the convict into a pit or orifice, referred to as *barathron* – seems to have been actually employed as a legal method of execution in classical Athens. So much at least may be gathered from the famous decree of Cannonus, according to which he “who harms the people” upon conviction must “die thrown into the *barathron*.”<sup>77</sup> Such is, however, the meaning of the text as emended by the editors; the manuscripts on the other hand read: “be thrown into the *barathron* after he dies.”<sup>78</sup> Perhaps therefore the decree refers simply to a method of disposing the bodies – of those who in addition to the death sentence were subject to the ban on burial (*ataphia*): they were simply thrown to a pit. The strongest evidence to such use of precipitation comes from Plato, who explicitly states that Miltiades, the victor from Marathon, was decreed to be thrown into the *barathron*,<sup>79</sup> and only afterwards did the Athenians have second thoughts. It seems therefore plausible that early in the 5th century BC precipitation was indeed employed as a method of execution. From the latter half of the century, however, we hear nothing of it,<sup>80</sup> apart from comic jokes.<sup>81</sup>

<sup>75</sup> Ἀθηναῖοι δὲ αὐτίκα [...] περιστάντες Λυκίδην κατέλευσαν βάλλοντες (Hdt 9.5); cf. V. Rosivach: “Execution by Stoning in Athens.” *CA* 1987, Vol. 6, no. 2, pp. 236–237.

<sup>76</sup> καὶ τοὺς μὲν ἄλλους αἰχμαλώτους Θράσυλλος εἰς Ἀθήνας ἀπέπεμψε πάντας, Ἀλκιβιάδην δὲ Ἀθηναῖον, Ἀλκιβιάδου ὄντα ἀνεψιὸν καὶ συμφυγάδα, κατέλευσεν (X. *Hell.* 1.2.13); cf. V. Rosivach: “Execution by Stoning in Athens”..., pp. 245–247.

<sup>77</sup> ἴστε δέ, ὦ ἄνδρες Ἀθηναῖοι, πάντες ὅτι τὸ Καννωνοῦ ψήφισμά ἐστιν ἰσχυρότατον, ὃ κελεύει, ἐάν τις τὸν τῶν Ἀθηναίων δῆμον ἀδικῇ, δεδεμένον ἀποδικεῖν ἐν τῷ δήμῳ, καὶ ἐὰν καταγνωσθῇ ἀδικεῖν, ἀποθανεῖν εἰς τὸ βάραθρον ἐμβληθέντα (X. *Hell.* 1.7.20).

<sup>78</sup> ἀποθανεῖν ... ἐμβληθέντα Dobree: ἀποθανόντα ... ἐμβληθῆναι MSS; cf. S.C. Todd: “How to Execute People in Fourth-Century Athens”..., p. 38, n. 26; see also D. Allen: *The World of Prometheus*..., pp. 324–325.

<sup>79</sup> Μιλτιάδην δὲ τὸν Μαραθῶνι εἰς τὸ βάραθρον ἐμβαλεῖν ἐψηφίσαντο, καὶ εἰ μὴ διὰ τὸν πρῦτανιν, ἐνέπεσεν ἄν. (Pl. *Gorg.* 516e); cf. Hdt 7.133 (Persian envoys); Plu. *Arist.* 3 (half-jokingly: Aristides and Themistocles).

<sup>80</sup> Admittedly the decree of Cannonus cannot be dated, and therefore may come from a later period (cf. M. Ostwald: *From Popular Sovereignty to the Sovereignty of Law. Law, Society and Politics in Fifth-Century Athens*. Berkeley 1986, p. 440).

<sup>81</sup> Ar. *Eq.* 1362–1363; *Nub.* 144–151; *Ran.* 574; *Plut.* 431; cf. S.C. Todd: “How to Execute People in Fourth-Century Athens”..., p. 38.